

DA QA/QC, 02/28/01, SY

OGC 72-1392

22 September 1972

STATSPEC

MEMORANDUM FOR: Chief, [redacted]

SUBJECT: Certain Resident Aliens of the U. S. for  
Purposes of the Immigration and National-  
ality Act may be Nonresident Aliens for  
Federal Tax Purposes

25X1

1. In the factual situation set forth in Revenue Ruling 72-297, a Filipino national employed by the United States Government [redacted] who was a permanent resident of the United States for purposes of the Immigration and Nationality Act was held to be a nonresident alien for income tax purposes. This ruling may be applicable to some employees of [redacted] as well as STATSPEC a number of alien employees and agents of other components. Persons qualifying under the ruling will be exempt from federal income taxes on their Agency compensation.
2. I have clarified applicability of this ruling through William Ceglie, Chief, Review Staff, Audit Division, Office of International Operations/IRS. He advises that a person who was lawfully admitted to the United States for permanent residence and is a resident alien for immigration and naturalization purposes may be considered a nonresident alien for tax purposes and exempt from federal income tax on income earned abroad if, after admission to the United States, he did not establish a permanent home in the United States but immediately obtained a re-entry permit and returned abroad.
3. Whether an alien is a resident or a transient is determined by the length and nature of his stay. One who comes to the United States for a definite purpose which in its nature may be

25X1

promptly accomplished and who does not establish a permanent residence in the United States is a transient and therefore may remain a nonresident alien for tax purposes. Many [redacted] employees should meet this standard.

25X1

4. [redacted] employees who believe they qualify for tax exemption under this ruling should pursue their claims individually through the Office of International Operations. There are two ways to do this. They may write to OIO for a ruling letter or they may claim the status of nonresident alien on their tax return. In either case they should give complete details of their immigration and resident status, date and place of entry into the United States, subsequent trips to the United States, and places of residence and employment abroad since admission as resident alien. Refunds may be claimed for calendar years 1969, 1970 and 1971. The statute of limitations has run on years prior to 1969 and, therefore, refunds on those years are not allowable.

5. I suggest that employees who think they are entitled to tax exemption should immediately amend their returns for years back through 1969 by filing Form 1040X. A favorable adjustment of the returns for those years by IRS will provide the assurance of eligibility for exemption in future years, provided that a permanent residence has not been established in the United States in the meantime. Employees should be reminded that the statute of limitations on filing an amended 1969 return will run on 15 April 1973.

STATSPEC

6. [redacted] should not withhold federal income taxes from employees who have received favorable rulings or tax adjustments from IRS or from employees who clearly have not established permanent residences in the United States.

STATSPEC

7. A suggested revision of Section XII 3, [redacted] Handbook is attached.

25X1

[redacted] Assistant General Counsel [redacted]

cc: ✓ SSA-DD/S  
C/CSB

25X1